In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 929

GULFPORT SHIPBUILDING CORPORATION AND TEXAS EMPLOYERS' INSURANCE ASSOCIATION, PETITIONERS

v.

MAXIME VALLOT AND DEPUTY COMMISSIONER C. D. CALBECK, BUREAU OF EMPLOYEES' COMPENSATION, UNITED STATES DEPARTMENT OF LABOR

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE DEPUTY COMMISSIONER IN OPPOSITION

Petitioners challenge in this Court the refusal of the Court of Appeals for the Fifth Circuit to determine the timeliness of a claim for workmen's compensation before any compensation award in favor of the claimant has been rendered by the Deputy Commissioner.

The relevant facts are not in dispute. Maxime Vallot was injured on September 6, 1957, during the course of his employment as a longshoreman with petitioner Gulfport Shipbuilding Corporation. Peti-

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tioner Texas Employers' Insurance Association is Gulfport's insurance carrier under the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. 901, *et seq.* As the Act permits, the Insurance Association voluntarily paid compensation benefits to Mr. Vallot on account of his injury without his filing a written claim and without the entry of a formal award of benefits by the Deputy Commissioner. After a period of five weeks, the Insurance Association, again acting on its own initiative, ceased paying benefits. Mr. Vallot received his last compensation payment on December 4, 1957.

In these circumstances, the Longshoremen's Act requires an injured employee, believing himself entitled to additional benefits, to file a written claim within one year after the last voluntary payment of compensation, 33 U.S.C. 913(a). Mr. Vallot is illiterate. However, upon receiving an inquiry from the Deputy Commissioner advising, *inter alia*, that the "right to compensation for disability is barred unless claim therefore is filed within one year * * * after the date of the last payment of compensation * * *" (R. 208), Mrs. Vallot responded in her husband's name on June 20, 1958, within the one year limitation period. Referring to the letter from the Deputy Commissioner, Mrs. Vallot stated in response (R. 203–204):

> I would also like to correct the error that said that I had returned to work on full earning power. I have worked in that period for only a few days, and I have been laid off from that company since the accident.

> I am still having trouble with the injured nerve in my neck that I received from the accident.

Although, as petitioners acknowledge (Pet. 31), any informal writing reasonably disclosing an intent to seek additional compensation satisfies the Act's jurisdictional requirement for filing a timely claim,[1] the Deputy Commissioner initially declined to award benefits to Mr. Vallot on the ground that Mrs. Vallot's letter in her husband's name did not constitute a claim.[2] Mr. Vallot sought judicial review of that decision under 33 U.S.C. 921.

In that action, petitioners and Mr. Vallot filed cross motions for summary judgment, each side seeking as a matter of law either the affirmance or the reversal of the Deputy Commissioner's ruling. The Deputy

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[1] The Longshoremen's Act contains an express presumption that sufficient notice of claim has been given, 33 U.S.C. 920(b). Held sufficient to constitute claims under the Act or under the New York Statute upon which it was modelled have been an attorney's letter (*Atlantic & Gulf Stevedores, Inc.* v. *Donovan*, 279 F. 2d 75 (C.A. 5)), an exchange of correspondence between the Deputy Commissioner and the father of a deceased workman (*Travelers Insurance Co.* v. [illegible]*ker*, 40 F. Supp. 692 (E.D. Va.)), a note from a widow written on the reverse of a printed form (*Stengel* v. *Great Atlantic & Pacific Tea Co.*, 14 App. Div. 2d 949, 221 N.Y.S. 2d 157. See also, *Borelli* v. *Rochester Transit Corp.*, 285 App. Div. 230, 136 N.Y.S. 2d 315; *Kaplan* v. *Kaplan Knitting Mills, Inc.*, 248 N.Y. 10, 161 N.E. 204; *Libby, McNeill & Libby* v. *Alaska Industrial Board*, 109 F. Supp. 101 (D. Alaska); and *Louisiana-Texas W. Co.* v. *United States Employees' Compensation Com'n*, 19 F. Supp. 396 (W.D. Ky)).

[2] Formal proceedings for additional benefits were not commenced by Mr. Vallot until after the one year limitation period had expired.

Commissioner, however, who was also a party, made a different request to the district court. He acknowledged that "a mistake was made" on his part and that the letter written by Mrs. Vallot for her husband would constitute a sufficient and timely claim for additional compensation (R. 45). He therefore asked that the cause be remanded to him for further administrative action, since there remained unresolved petitioners' alternative objection to an award of compensation to Mr. Vallot, *i.e.*, that claimant's present disabilities stemmed not from his industrial accident, but from an automobile collision in which he had been involved at a later date.

On May 2, 1963, the district court denied the cross motions for summary judgment and, without purporting to pass on the legal sufficiency of the letter as a timely claim, ordered the cause "remanded to the Deputy Commissioner for further consideration." (R. 46–47.)

On July 21, 1964, the court of appeals dismissed petitioners' appeal from that remand order as not taken from a final judgment required by 28 U.S.C. 1291, *Gulfport Shipbuilding Corporation, et al.* v. *Maxime Vallot, et al.*, 334 F. 2d 358 (C.A. 5) (Pet. App. 1a), and on September 24, 1964, denied petitioners' motion for rehearing (Pet. App. 5a). The petition for certiorari followed.[2]

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[2]On December 19, 1964, Mr. Justice Brennan extended the time for filing the petition until February 22, 1965. That day being a legal holiday, the petition was timely filed on February 23, 1965.

This case hardly falls within "the 'twilight zone' of finality" which petitioners invoke in their citation of *Gillespie* v. *U.S. Steel Corp.*, 379 U.S. 148, 152 (Pet. 9). Contrary to petitioners' assertions (Pet. 24), the district court was not obligated to "rule one way or the other" in reviewing a decision of the Deputy Commissioner under the Longshoremen's Act. There is agreement among the circuits that a reviewing court may remand a cause for further administrative proceedings before rendering its own final judgment on the merits of a compensation decision. *Le Blanc* v. *Henderson,* 264 F. 2d 946 (C.A. 5); *Dixie Sand & Gravel Corporation* v. *Holland,* 255 F. 2d 304 (C.A. 6); *Monrote* v. *Britton,* 237 F. 2d 756 (C.A.D.C.); *Vendemia* v. *Cristaldi,* 221 F. 2d 103 (C.A.D.C.). See also *Simmons* v. *Andruzzi,* 222 F. Supp. 803 (E.D. Pa.); *Cullember* v. *O'Hearne,* 183 F. Supp. 594 (D. Md.). Whether or not in other circumstances a remand order might also be a final decision within the meaning of 28 U.S.C. 1291, the district court's order in this case plainly lacked such finality. The order did not purport to decide whether the letter in question constituted a claim under the Act. Nor did it direct the entry of any compensation award. And it cannot be said that the entry of such an award will flow as a matter of course from the remand, since the Deputy Commissioner had not yet considered petitioners' alternative assertions that Mr. Vallot's present disabilities are traceable to a source other than his industrial accident. In short, the remand order is patently not "one which ends the litigation on the

merits and leaves nothing for the court to do but execute the judgment." *Catlin* v. *United States,* 324 U.S. 229, 233.

Nor is there any occasion to depart from that standard on the theory that "observance of it would practically defeat the right to any review at all." *Cobbledick* v. *United States,* 309 U.S. 323, 324–325. If a compensation award favorable to Mr. Vallot is eventually rendered, petitioners will at that time be able to present, and the courts to consider, the contention that Mr. Vallot's claim was untimely as a matter of law. 33 U.S.C. 921(b). It will then be possible to resolve in a single proceeding both the "timeliness" point and the merits of Mr. Vallot's claim of injury. Had the court of appeals accepted petitioners' contention, two separate judicial proceedings might well have been required.

For the reasons stated, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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